Filed 3/14/19 P. v. Twenty-nine Thousand One Hundred Sixty Dollars etc. CA2/5

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Petitioner and Respondent, v. TWENTY-NINE THOUSAND ONE HUNDRED SIXTY DOLLARS ($29,160) IN U.S. CURRENCY, Defendant, DEAMONTE ALFORD, Defendant and Appellant.	B285357 (Los Angeles County Super. Ct. No. BS163451)

APPEAL from an order of the Superior Court of the County of Los Angeles, William F. Fahey, Judge. Affirmed.

Law Offices of J. David Nick, J. David Nick, for Defendant and Appellant.

Jackie Lacey, District Attorney (Los Angeles), Phyllis C. Asayama and Ruth Low, Deputy District Attorneys, for Petitioner and Respondent.

I. INTRODUCTION

Deamonte Alford (claimant) filed a motion to set aside a default judgment entered in an in rem civil forfeiture action filed by the Los Angeles County District Attorney. The trial court denied the motion, ruling that claimant was not entitled to mandatory or discretionary relief under Code of Civil Procedure section 473, subdivision (b)[1] and that the judgment could not be set aside as void under section 473, subdivision (d) for failure to properly serve him with the forfeiture petition.

On appeal, claimant contends that he was entitled to mandatory relief under section 473, subdivision (b) because he submitted an attorney declaration in support of his motion to set aside and the trial court abused its discretion in denying his request for discretionary relief under that statute. In addition, claimant asserts that the judgment must be set aside under sections 473, subdivision (d) and 473.5 because the District Attorney's failure to serve him with a summons on the forfeiture petition, as required under the Health and Safety Code, rendered the subsequent default judgment void.

As a preliminary matter, we conclude that claimant has appealed from a special order after judgment that is appealable under section 904.1, subdivision (a)(2). On the merits of the

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

appeal, we hold that claimant was not entitled to mandatory relief under section 473, subdivision (b) because he failed to submit the required attorney affidavit of fault and his failure to provide a reporter's transcript of the hearing on his motion to set aside precludes review of his abuse of discretion claim. We further hold that the judgment was not void because service of summons was not required under the applicable provisions of the Health and Safety Code. We therefore affirm the judgment.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *Forfeiture Petition*

On July 11, 2016, the Los Angeles County District Attorney filed a petition for forfeiture pursuant to Health and Safety Code section 11470 et seq. According to the petition, the "subject matter of this action is Twenty-Nine Thousand One Hundred Sixty Dollars ($29,160.00) in U.S. Currency. . . . [¶] [The currency] was seized by officers of the Los Angeles County Sheriff's Department . . . on or about April 20, 2016. [¶] [The currency was] subject to forfeiture because, within five years of [the] date of seizure, it was furnished or intended to be furnished by a person in exchange for a controlled substance, or [was] the proceeds of such an exchange, or was used or intended to be used to facilitate any violation of law as described in [Health and Safety Code] section 11740, subdivision (f). . . ." The petition requested an order declaring the currency forfeited and subject to disposal as provided by law.

B. *Default Judgment*

On January 9, 2017, the District Attorney filed an application for a default judgment of forfeiture. The application stated that no notice of the application had been given because the proceeding was in rem against the currency and there were no parties who had filed a claim opposing forfeiture. The declaration in support of the default application attached, among other documents, copies of a verified incident report and an affidavit in support of a search warrant which described the facts giving rise to the underlying criminal action against claimant (case number LACBA446419) and the request for forfeiture.[2]

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[2] The verified incident report of claimant's arrest stated as follows: On April 18, 2016, Los Angeles County Sheriff's Department Detective Tom Logrecco was working with a narcotics enforcement team monitoring an inbound parcel sort at a Federal Express Service Center in Los Angeles. During the sort, he noticed a suspicious package addressed to a commercial mail and receiving agency. When a narcotics dog alerted to the package, Detective Logrecco seized it, went to the commercial business to which it was addressed, and learned that claimant rented the mail box listed in the address.

Detective Logrecco proceeded to claimant's home address, entered with claimant's consent, and recovered bags of marijuana in plain view on the kitchen counter and additional bags from behind the headboard of a bed. With claimant's permission, Detective Logrecco opened the Federal Express package he had seized and removed bundles of currency which, according to claimant, came from his mother for his rent.

Following a search of claimant's apartment pursuant to a search warrant, deputies recovered from a safe "miscellaneous U.S. [c]urrency in various denominations." Because Detective Logrecco believed claimant possessed marijuana for sale and the

The declaration in support of the forfeiture application also stated that claimant had been served by first class and certified mail with the petition, a notice of judicial forfeiture, and a blank claim form for opposing the forfeiture. Copies of the proofs of service by first class and certified mail were attached, along with the return receipt.

On January 9, 2017, the trial court held a hearing on the default application. That same day, the trial court entered a default judgment of forfeiture and order of distribution, as well as a minute order stating that the judgment had been signed and filed that day.

C. *Motion to Set Aside*

On June 27, 2017, claimant filed a motion to set aside the default judgment pursuant to sections 473, subdivisions (b) and (d) and 473.5. Claimant asserted that he was not aware of the default judgment and his prior attorney caused him to believe she was contesting the forfeiture. Claimant further argued that because the currency was seized from him, he was entitled to service of process under the provisions of the Code of Civil Procedure which require personal service; and that he was not properly served under the Health and Safety Code because "no one signed" the required return receipt and the required blank

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currency recovered was the proceeds from the transportation, distribution, and sale of a controlled substance, claimant was arrested and the currency and other evidence of sales were booked into evidence. The currency from the parcel totaled $5,000 and the currency from the safe totaled $25,160 for a total of $29,160.

claim form for opposing the forfeiture was not served on him. The motion to set aside was supported by the declarations of claimant and his attorney, J. David Nick.

1. Claimant's Declaration

According to claimant, his underlying criminal case was pending when the District Attorney filed the forfeiture petition in July 2016. But claimant did not have any knowledge of the petition during the pendency of the criminal proceeding; he did not learn about the forfeiture proceedings until June 19, 2017.

In August 2016, claimant's attorney in the criminal proceeding, Sharen Ghatan, told claimant she would be contesting the forfeiture. She asked claimant to provide her with information about the origins of the currency, and he in turn asked his mother to provide the necessary financial information. Claimant forwarded his mother's information to attorney Ghatan on August 19, 201[6], and she told him the seized currency "could be addressed at any time after the criminal case was over."

In May 2017, claimant retained attorney Nick to petition for resentencing on his felony criminal conviction. At the June 19, 2017, resentencing hearing, claimant asked attorney Nick to assist him in seeking the return of the seized currency because attorney Ghatan's efforts to release the currency had been unsuccessful. Following his resentencing hearing, claimant asked attorney Ghatan to send any documents pertaining to the seized currency to attorney Nick. Upon receipt of documents from attorney Ghatan that same day, attorney Nick explained to claimant that the forfeiture proceeding had not been contested and that a default judgment had been entered in January 2017.

Claimant was "surprise[d]" that a default judgment had been entered because he believed attorney Ghatan had been contesting the forfeiture.

According to claimant, he had not been served with a notice of default judgment or a "first class letter from the [D]istrict [A]ttorney's office addressing the forfeiture of the currency. . . ." He also had no recollection of receiving certified mail regarding the forfeiture, but if he had received such documents, he would have forwarded them without review to attorney Ghatan in connection with her contest of the forfeiture. In addition, claimant did not recall receiving a blank claim form for contesting the forfeiture.

2. Attorney's Declaration

Attorney Nick declared that in May 2017, he was retained to represent claimant in connection with a resentencing petition in the underlying criminal action. The resentencing hearing was scheduled for June 19, 2017.

At claimant's June 19, 2017, resentencing hearing, claimant asked attorney Nick if he could assist in the release of the seized currency because attorney Ghatan had not been successful in doing so, despite being provided the necessary financial information from claimant's mother. Attorney Nick instructed claimant to have attorney Ghatan send any documents relating to the forfeiture to his office. That same day, attorney Nick received the documents forwarded by attorney Ghatan,[3]

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[3] Among the documents attorney Nick received were documents from claimant's mother explaining the origins of the seized currency.

reviewed the online docket for the forfeiture proceeding, and informed claimant that a default judgment had been entered.

D. *Opposition*

On July 17, 2017, the District Attorney filed a response to the motion to set aside, arguing that Health and Safety Code section 11488.4 ("section 11488.4") expressly authorized service of the forfeiture documents by certified mail and that service on claimant had been completed in that manner. The District Attorney also asserted that there was no requirement that notice of the default judgment be served and that the Health and Safety Code did not require service of a summons on parties interested in a default because forfeiture was an in rem proceeding.

E. *Ruling on Motion to Set Aside*

The hearing on claimant's motion to set aside was scheduled for July 31, 2017. The record does not include a reporter's transcript of the hearing or a suitable substitute such as a settled or agreed statement. On August 1, 2017, the trial court issued a minute order reflecting that the "Court's Order Denying Motion to Set Aside Default Judgment issued and filed August 1, 2017, *is incorporated by reference* and summarized below: [¶] IT IS ORDERED that the Motion to Set Aside Default Judgment is Denied." (Italics added.)

That same day, the trial court filed a two-page, "ORDER DENYING MOTION TO SET ASIDE DEFAULT JUDGMENT." The order was filed-stamped August 1, 2017, and provided as follows: "This is a forfeiture action filed by the People on

July 11, 2016. The file reflects that [claimant] was served with a copy of the Petition and a (blank) copy of a Claim Opposing Forfeiture by certified mail on July 25, 2016. [Claimant] did not thereafter file a claim. This Court entered a judgment on January 9, 2017. [¶] On June 27, 2017, [claimant] filed the instant Motion to Set Aside the Default Judgment. In support of the Motion, [claimant] has filed his declaration. In his declaration, [claimant] vaguely asserts that he was not served with the Petition and blank Claim form: 'I have no recollection of ever receiving a certified mail regarding the forfeiture.' However, he does not contest the authenticity of the Return Receipt for the certified mail delivery. [Claimant] then makes several contradictory statements: He first claims that he 'had no knowledge the currency was being subjected to default proceedings during the life of [his] criminal case and first learned that had occurred on June 19, 2017.' He also claims that 'in August of 2016 [he] still had no knowledge that the United States Currency which is the basis of this litigation had been the subject of default forfeiture proceedings.' [¶] But later in his declaration [claimant] admits that he was aware of the forfeiture proceedings at least one year ago: 'my attorney, Ms. Ghatan, expressed to me on or about the first week of August 2016 that she would handle contesting the forfeiture (sic).' The Court finds that [claimant] had actual knowledge of the forfeiture proceeding in August 2016. [¶] The People oppose the Motion on the basis that service was properly made pursuant to [] section 11488.4 and [claimant] failed timely to make a claim. At the hearing, [claimant's] counsel made a strained and unsupported argument that personal service was required under Section 11488.4 and that service was also not proper under the [Code of Civil Procedure].

This argument is rejected. [¶] Ultimately, it appears that [claimant's] real complaint is against his former attorney because she failed to timely contest the forfeiture proceedings. But no declaration of fault has been submitted by the former attorney. In any event, 'conduct falling below the professional standard of care . . . is not excusable.' *Garcia v. Hejmadi*, 58 Cal.App.4th 674, 682 (1997) (client's remedy is a malpractice action). *Accord, Pazderka v. Caballeros Dimas Alang, Inc.*, 62 Cal.App.4th 658 (1998). Accordingly, good cause having been shown, [¶] IT IS ORDERED that the Motion to Set Aside Default Judgment is Denied."

On September 26, 2017, claimant timely filed his notice of appeal.

III. DISCUSSION

A. *Appealable Order*

A denial of a section 473 motion is an appealable order, separate from the judgment. (§ 904.1, subd. (a)(1); *Austin v. Los Angeles County Unified School Dist.* (2016) 244 Cal.App.4th 918, 928, fn. 6 ["An order denying relief from a judgment under section 473[, subdivision] (b) is a separately appealable post-judgment order under . . . section 904.1, subdivision (a)(2)"]; *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 1004, 1008.)

The minute order and written order were both filed August 1, 2017, and neither party contends that the appeal—which was filed within 60 days of that date—was untimely. Claimant's notice of appeal—which indicates the

appeal is from the trial court's "order of August 1, 2017, denying Claimant's motion to set aside the entry of default judgment"—therefore was timely filed from an appealable postjudgment order.

B. *Trial Court Did Not Err in Denying Mandatory Relief Under Section 473, Subdivision* (*b*)

"Section 473, subdivision (b) provides for two distinct types of relief—commonly differentiated as 'discretionary' and 'mandatory'—from certain prior actions or proceedings in the trial court. 'Under the discretionary relief provision, on a showing of "mistake, inadvertence, surprise, or excusable neglect," the court has discretion to allow relief from a "judgment, dismissal, order, or other proceeding taken against" a party or his or her attorney. Under the mandatory relief provision, . . . upon a showing by attorney declaration of "mistake, inadvertence, surprise, or neglect," the court shall vacate any "resulting default judgment or dismissal entered."' [Citation.] Applications seeking relief under the mandatory provision of section 473 *must be 'accompanied by an attorney's sworn affidavit attesting to his or her mistake, inadvertence, surprise, or neglect*.' (§ 473, subd. (b).) The mandatory provision further adds that 'whenever relief is granted based on *an attorney's affidavit of fault* [the court shall] direct the attorney to pay reasonable compensatory legal fees and costs to opposing counsel or parties.' (*Ibid.*)" (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119, 1124, italics added.)

Relying on the language "the court shall" and "accompanied by an attorney's sworn affidavit," claimant argues that, as long as a motion under the mandatory provision of section 473,

subdivision (b) is supported by a declaration of an attorney, relief is required. Because attorney Nick submitted a declaration in support of the motion to set aside, claimant concludes that the trial court was required to vacate the default judgment. We disagree.

First, under the mandatory provision of section 473, the required attorney affidavit must attest to "*his or her* mistake, inadvertence, surprise, mistake, or neglect . . . ." Attorney Nick, however, did not attest to his own mistake or neglect. Instead, at best, he suggested, based on information provided by claimant, that attorney Ghatan may have been responsible for the default judgment by failing to timely contest the forfeiture petition. Section 473, subdivision (b), however, does not provide for mandatory relief when an attorney's fault is demonstrated by other means, such as a declaration from a subsequent attorney or a party. Thus, on its face, attorney Nick's declaration did not satisfy the requirements for mandatory relief under section 473, subdivision (b).

Second, claimant's interpretation of the mandatory provision is inconsistent with the underlying purpose of that provision. "[S]ection 473, subdivision (b)'s mandatory relief provision has three purposes: (1) 'to relieve the innocent client of the consequences of the attorney's fault' [citations]; (2) 'to place the burden on counsel' [citation]; and (3) 'to discourage additional litigation in the form of malpractice actions by the defaulted client against the errant attorney' [citation]. [¶] These purposes are advanced as long as mandatory relief is confined to situations in which the attorney, rather than the client, is the cause of the default, default judgment, or dismissal. [Citations.]" (*Martin*

Potts & Associates, Inc. v. Corsair (2016) 244 Cal.App.4th 432, 439.)

Here, under claimant's construction of the mandatory relief provision, the purpose of that provision would not be advanced because the burden of attorney Ghatan's mistake or neglect, if any, would not be shifted to her because she did not admit under oath any fault or other responsibility for the default judgment. Instead, under claimant's construction, he could be relieved from the default without any attorney accepting responsibility for its entry. For this further reason, we reject the assertion that mandatory relief under section 473 is required as long as an attorney submits a declaration in support of a motion to set aside.

C. *Trial Court Did Not Abuse its Discretion in Denying Relief Under Section 473, subdivision (b)*

Claimant alternatively argues that the trial court erred in denying discretionary relief pursuant to section 473, subdivision (b). "A ruling on a motion for discretionary relief under section 473 shall not be disturbed on appeal absent a clear showing of abuse. [Citations.] As the Supreme Court explained in *In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598 [] 'Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered. [Citations.] We have said that when two or more inferences can reasonably be deduced from the facts, a reviewing court lacks power to substitute its deductions for those of the trial court.' [Citation.]" (*State Farm*

Fire & Casualty Co. v. Pietak (2001) 90 Cal.App.4th 600, 610 (*Pietak*).)

Such claims of abuse on appeal ordinarily require resort to the transcript of the relevant hearing to review the trial court's stated reasons for its discretionary decision and to determine whether additional evidence and arguments were presented to the court for consideration or whether either party made concessions or entered into stipulations that may have affected the trial court's discretionary determination. (See *Pietak, supra*, 90 Cal.App.4th at p. 610 ["because the trial court's order denying [the] defendant's motion for relief does not state its reasons, and [the] defendant has provided no reporter's transcript of the proceedings, we presume the trial court's rejection of [the defendant's] motion was based on any rationale supported by the record"].) Absent the reporter's transcript, we cannot conclude that the trial court abused its discretion under section 473, i.e., exceeded the bounds of reason, all circumstances before it being considered. To the contrary, our review of the record, including the statements in the minute order and factual findings of the trial court demonstrate no abuse of discretion. We therefore affirm the denial of the motion under the discretionary provisions of section 473, subdivision (b).

D. *Failure to Serve Claimant with Summons Does Not Require Reversal*

Finally, claimant contends that the trial court erred in denying him relief under section 473, subdivision (d) and 473.5.[4] Claimant construes section 11488.4[5] to require service of a summons on any person who is listed in the receipt for the seized

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[4] Section 473.5 permits a court to set aside a default judgment where a party lacks actual notice in time to defend the action. Here, the trial court expressly found that claimant had actual notice of the forfeiture proceeding in August 2016, five months prior to entry of the default judgment, a finding claimant does not challenge on appeal. Claimant does not articulate how section 473.5 supports his argument. Thus, we focus our discussion on section 473, subdivision (d).

[5] Section 11488.4, subdivision (c) provides: "The Attorney General or district attorney shall make service of process regarding this petition upon every individual designated in a receipt issued for the property seized. In addition, the Attorney General or district attorney shall cause a notice of the seizure, if any, and of the intended forfeiture proceeding, as well as a notice stating that any interested party may file a verified claim with the superior court of the county in which the property was seized or if the property was not seized, a notice of the initiation of forfeiture proceedings with respect to any interest in the property seized or subject to forfeiture, to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized. Whenever a notice is delivered pursuant to this section, it shall be accompanied by a claim form as described in Section 11488.5 and directions for the filing and service of a claim."

property. He bases this argument on the phrase "the Attorney General or the district attorney shall make service of process regarding [a petition of forfeiture] upon every individual designated in the receipt . . . ." (Italics removed.) According to claimant, the term service of process "has always equated with the issuance and service of summons," citing *Carol Gilbert, Inc. v. Haller* (2009) 179 Cal.App.4th 852, 859. Because he was not served with a summons, claimant maintains the default judgment should be voided pursuant to sections 473, subdivision (d) and 473.5 for lack of proper service.

Claimant's argument equates service of process under the Code of Civil Procedure in a civil in personam action with service of the forfeiture petition in a civil in rem action under Health and Safety Code section 11488.4, subdivision (c). In the former context, service of summons on a defendant is required for the court to exercise jurisdiction over the person of a defendant who does not appear voluntarily. (See *Dill v. Berquist Construction Co.* (1994) 24 Cal.App.4th 1426, 1439-1440 ["In the absence of a voluntary submission to the authority of the court, compliance with the statutes governing service of process is essential to establish that court's personal jurisdiction over a defendant"]; § 410.50, subdivision (a) ["Except as otherwise provided by statute, the court in which an action is pending has jurisdiction over a party from the time summons is served on him as provided by Chapter 4 (commencing with Section 413.10). A general appearance by a party is equivalent to personal service of summons on such party"].) In the latter context, however—in which the action is against property seized—there is no need to exercise jurisdiction over the person of a potential claimant because the court acquires such jurisdiction if and when the

claimant voluntarily makes a claim against the property that is the subject of the action. (See *People v. Superior Court* (*Placencia*) (2002) 103 Cal.App.4th 409, 418 ["A forfeiture proceeding is a civil in rem action in which property is considered the defendant, on the fiction that the property is the guilty party"].)

In *People v. Parcel No. 056-500-09* (1997) 58 Cal.App.4th 120, 123 (*Parcel 056*), the court rejected a claimant's argument that the default judgment should be set aside because he had not been served with a summons. According to the court in *Parcel 056*, "[S]ection 11488.4 provides for three types of notice of forfeiture proceedings. [Citation.] First, a person from whom property is seized and who is named in a receipt for the seized property is entitled to service of process of the petition of forfeiture. (Health & Saf. Code, § 11488.4, subd. (c).) Second, notice of the seizure or of an intended forfeiture proceeding along with instructions for filing a claim is 'to be served by personal delivery or by registered mail upon any person who has an interest in the seized property or property subject to forfeiture other than persons designated in a receipt issued for the property seized.' (*Id*., § 11488.4, subd. (c).) Finally, notice of a forfeiture action must be published once a week for three consecutive weeks in a newspaper of general circulation in the county of seizure. (*Id*., § 11488.4, subd. (e).)" (*Id.* at p. 125.)

Noting that the claimant in that case was a person interested in the property, as opposed to a person named in the receipt, the court in *Parcel 056, supra*, 58 Cal.App.4th 120 concluded that "[a]s a person with a potential interest in the property, [the claimant] was entitled to notice of an intended forfeiture proceeding and instructions for filing a claim, precisely

those documents which the People sought to serve on [the claimant]. He was not entitled to a 'summons' of the petition for forfeiture. While the Code of Civil Procedure applies to forfeiture proceedings under chapter 8 of the Health and Safety Code unless inconsistent with provisions in that chapter, Code of Civil Procedure sections 415.50 (service by publication of a summons) and 412.20 (defining summons), upon which [the claimant] relies, do not apply, as the notice requirements for forfeiture proceedings are specifically set forth in section 11488.4." (*Id*. at p. 126.)

Here, unlike the case in *Parcel 056, supra*, 58 Cal.App.4th 120, claimant was named in the receipt for seized property. Nonetheless, the reasoning of *Parcel 056, supra,* that section 11488.4, subdivision (c) does not require the service of a summons, in addition to the service of the forfeiture petition itself (58 Cal.App.4th at p. 126), applies with equal force here. In the context of an in rem forfeiture proceeding under the Health and Safety Code, we read the term "service of process" in the technical sense to mean "'formal delivery of documents that is legally sufficient to charge the defendant with notice of a pending action.'" (*In re Jennifer O.* (2010) 184 Cal.App.4th 539, 549, quoting *Volkswagonwerk Aktiengesellshaft v. Schlunk* (1988) 486 U.S. 694, 700; see also *Kern County Department of Human Services v. Superior Court* (2010) 187 Cal.App.4th 302, 309.) Therefore, the failure of the District Attorney to include a summons with the other documents served on claimant did not render service of notice defective under the Health and Safety Code or otherwise operate to void the default judgment. (*See e.g. People v. Fifteen Thousand Two Hundred Seventeen Dollars* (1990) 218 Cal.App.3d 720, 723 ["the person from whose

possession the property was seized is entitled to service of the petition of forfeiture"].)

IV. DISPOSITION

The order denying the motion to set aside default judgment is affirmed. Petitioner is awarded its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

KIM, J.

We concur:

MOOR, J.

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BAKER, Acting P. J., Concurring

The appellate record provided by appellant Deamonte Alford is inadequate to permit appellate review of his contention that the default judgment is void for lack of a service of a summons. On that specific point, the trial court's written ruling states an argument was made at a hearing on appellant's motion to set aside the default judgment, but we have no reporter's transcript (or agreed or settled statement) that would reveal the specifics of what was said or argued. The trial court's disposition of the argument, i.e., "this argument is rejected," provides no further meaningful illumination. The record on this point is accordingly insufficient to affirmatively demonstrate error. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.)

As to the remainder of appellant's contentions on appeal, I agree with the majority's reasons for rejecting them. I therefore concur in affirming the order denying the motion to set aside the default judgment.

BAKER, Acting P. J.